IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.448 of 2000.

Judgement reserved on: 20.12.2007.

Date of decision: *December 24, 2007*.

State of H.P. ….. Appellant.

Versus

Shaunk Ram & Ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr.M.L.Chauhan, Addl. Advocate General.

For the Respondents : None.

Kuldip Singh, Judge.

The State has filed this appeal against the judgment dated 3.1.2000, passed by learned Additional Chief Judicial Magistrate, Court No.1, Shimla, in case No.33/2 of 1993, acquitting the respondents under Sections 379, 411 I.P.C. and Sections 33, 41, 42 of the Indian Forest Act.

2. The prosecution case in brief is that Forest Guard, Gopal Singh of Ghanati Beat on 6.3.1992 moved an application to PW-5 Tulsi Ram, B.O. Ghanati, which was forwarded to Police. It was alleged in the application that there was illicit felling in B-36 Brelli Jungle and six *devdar* trees have been illicitly felled. The Forest Guard was on leave from 1.3.1992 to 4.3.1992. On this report, the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

police registered the case. The Investigating Officer prepared spot map. It is alleged that respondent No.1 Shaunk Ram made a disclosure statement that trees were cut by respondents Lalit Kumar, Jamnia, Shobha Ram during *Shivratri* night. The timber was transported in *Swaraj Majda* truck No.HIS-591 which was ultimately to be used in the house of some Sub Divisional Officer. The respondent Vijay Kumar was arrested and at his instance 21 scants of different sizes were recovered, respondent Ganesh Dutt was also arrested whose house was being constructed and at his instance some more wood was recovered. The Investigating Officer recovered saw from the house of respondent Shaunk Ram. After completion of the investigation, challan was filed in the Court against the respondents who were charged under Sections 379, 411 I.P.C. and Sections 33, 41 and 42 of the Indian Forest Act. They pleaded not guilty and claimed trial. The prosecution examined 11 witnesses. The remaining evidence of the prosecution was closed by the order of the Court. The respondents were examined under Section 313 Cr.P.C. They denied the prosecution case but did not lead any evidence in defence. The learned Additional Chief Judicial Magistrate acquitted the respondents, as aforesaid. Hence, this appeal.

3. I have heard learned Additional Advocate General for the State and gone through the record. He has submitted that prosecution has proved the case against the respondents beyond reasonable doubt. The learned Additional Chief Judicial Magistrate has acquitted the respondents wrongly. The evidence has not been appreciated properly.

4. PW-1 Rakesh Sharma, who was constructing his house, has stated that his mother told him that in March 1992 some persons had left timber brought in a truck at their house. Next day some person of his own took away that timber. He does not know those persons. This witness was declared hostile but he has stated nothing material in support of the case of prosecution. PW-2 Rajiv Gupta was also declared hostile and did not support the prosecution. He was cross examined and in his cross examination, he has stated that he signed papers at the instance of the police at Police Station. He, however, admitted his signatures on memo Ext.PW-2/A to Ext.PW-2/G. He has stated that he did not read the papers before signing. PW-3 Heeru Ram has stated that police told him that they had recovered some timber and he signed some papers. He denied that Jamna Dass made any statement in his presence. He was declared hostile. In cross-examination, he has admitted his signatures on memo Ext.PW-3/A but has stated that memo Ext.PW-3/A was not read over to him. He has denied that memo Ext.PW-3/A was signed by Jamna Dass in his presence. He has further stated that he signed Ext.PW-3/A at Police post. PW-4 Gokal has stated that about two years ago he was going in his vehicle and at place near Seri a truck was parked in the middle of the road and has blocked the road. He got down from his vehicle and told to bring the truck to one side but in the meantime, HC Anant Ram, his friend, came and told that they had seized timber in the truck. He signed some documents. He was declared hostile. In cross examination, he has admitted his signatures on memo Ext.PW-2/E. He has further stated that timber

was not shown by the police to him but volunteered that the wood was kept some 100 meters away from that place. He denied the contents of documents signed by him. PW-5 Tulsi Ram B.O. has proved report Ext.PW-5/B and F.I.R. Ext.PW-5/A. PW-6 Roop Lal also did not support the prosecution case and was declared hostile and was cross examined by prosecution. He has stated that he was called at police post Dhami. He denied that respondent Jamna Dass made disclosure statement in his presence. He admitted his signatures on memo Ext.PW-3/A. The prosecution could not extract anything in cross examination which is favourable to prosecution. PW-7 Hari Nand was also declared hostile. In cross examination, he admitted his signatures on Ext.PW-2/D. He denied that any respondent made any statement in his presence. PW-8 Gopal Singh, Forest Guard, has stated that statements Ext.PW-2/B and Ext.PW-2/C were recorded in his presence. He has also proved memo Ext.PW-2/F and Ext.PW-2/G. He has stated that he found 9 trees were cut in the jungle. He has stated that he did not prepare any damage report for the trees allegedly cut. He has admitted that trees were not cut in his presence. He has stated that statement Ext.PW-2/B was prepared in Ghanati Bazar. PW-9 S.I. Om Parkash has proved complaint Ext.PW-5/B and F.I.R. Ext.PW-5/A. PW-10 Constable Jawahar Singh has proved seizure of truck No.HIS-591 along with documents vide Ext.PW-10/A. He has stated that respondent No.6 Vijay Kumar was not present on the spot but later on said that he (Vijay Kumar) along with Ramesh were present on the spot. PW-11 HC Bhupinder has stated that on 13.12.1992 the truck

was released by the orders of the Court. He has also stated that demarcation report Mark 'X' was obtained from T.C.Behal, Tehsildar (Rural).

5. The prosecution case is that 6 *Devdar* trees were cut by the respondents. PW-8 Gopal Singh, Forest Guard, has stated that when he returned after availing leave he found 9 trees were cut in the jungle. The prosecution has not examined any eye witness nor any instrument was recovered which was used for cutting the trees. The witnesses of alleged disclosure statements have turned hostile and despite cross examination of those witnesses by the prosecution, they have not stated anything favourable to the prosecution. The transportation in the truck and recovery of the timber has also not been proved. No damage report of 6 *Devdar* trees has been prepared by the Forest Guard. The alleged recovered timber has not been connected with 6 or 9 alleged cut trees from the jungle. The demarcation report has also not been proved. The initial complaint made by Forest Guard to PW-5 Tulsi Ram, B.O., has not been produced. The learned Additional Chief Judicial Magistrate has appreciated the material on record and has rightly come to the conclusion that prosecution has failed to prove the case against the respondents. The prosecution has miserably failed to make out any case for interference.

6. As a result, the appeal is dismissed. The bail bonds furnished by the respondents are hereby discharged.

December 24, 2007. **(Kuldip Singh)**
(soni) **Judge.**